IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 12.12.2005

Coram

The Honourable Mr. Justice K. RAVIRAJA PANDIAN

and

The Honourable Mr. Justice P.P.S. JANARTHANA RAJA

Tax Case(Appeal) No.471 of 1999

M/s. Universal Radiators Ltd.
38, Mettupalayam Road,
Coimbatore 641 043 ... Appellant

..vs..

The Commissioner of Income-tax,
Special Range I,
Coimbatore. ... Respondent

Appeal against the order of the Income-tax Appellate Tribunal "C" Bench, Chennai dated 19.11.1998 passed in I.T.A. No.951/Mds/91 against the order of the Commissioner of Income Tax, Coimbatore dated 7.3.1991 in 1416 (54 & 55) /90-91.

For Appellant : Mr. R. Meenakshisundaram

For Respondent : Mr. N. Murali Kumar,
S.C.G.S.C.

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JUDGMENT

(Judgment was delivered by K. RAVIRAJA PANDIAN, J.)

The assessee, Universal Radiators Limited, Coimbatore filed the above appeal against the order of the Income-tax Appellate Tribunal dated 19.11.1998 raising the following substantial questions of law:-

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" 1. Whether the Income-tax Appellate Tribunal was right in law in upholding the order of the Commissioner of Income-tax, Coimbatore passed under Section 263 of the Income-tax, directing the Assessing Officer to withdraw the depreciation granted to the appellant on properties allotted to it on the dissolution of the partnership firm, Universal Real Estate Agency on 30.3.1976?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that allotment of properties to the partners on the dissolution of the firm result in transfer requiring registration under Section 17 of the Registration Act, 1908, totally ignoring the principles to the contrary laid down by the Hon'ble Supreme Court in the case reported in 212 ITR 592?

3. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the Commissioner of Income-tax, Coimbatore was right in holding that the appellant was not the owner of the property allotted to it in the dissolution of the partnership firm Universal Real Estate Agency?"

2. The assessment year is 1986-87. The appellant is a Company carrying on the business of manufacturing automobile radiators. The appellant entered into a partnership agreement with Madras Radiators and Pressing Pvt. Ltd., another company and two other individuals namely, A.P. Madhavan and P. Sharada with effect from 1.4.1975. Under the said agreement, the individuals Madhavan and Sharada brought into the firm the property situated at Sanganur village consisting of factory buildings and agricultural land owned by them, whereas the two Companies made their contribution in cash. The firm was so formed in the name of Universal Real Estate Agency with effect from 1.4.1975 and the same was subsequently dissolved with effect from 30.3.1976.

3. On the said dissolution, the properties in Mettupalayam Road, Sanganur village, Coimbatore belonging to the firm, consisting of factory building and agricultural land, were allotted to the appellant-Universal Radiators Ltd., who were

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running their factory in the building allotted to them, consequent to the aforesaid dissolution and claiming depreciation right from the assessment year 1977-78 and the same was allowed by the respondent. For the assessment year 1986-87, the appellant claimed depreciation in respect of the factory buildings and the same was allowed by the Deputy Commissioner of Income Tax, Special Range I, Coimbatore under Section 143(3) of the Income-tax Act, by an order dated 23.3.1989.

4. Subsequently, the Commissioner of Income-tax, by notice dated 10.01.1961 issued under Section 263 of the Income-tax Act, called upon the assessee to show cause as to why the assessment made by the Assessing Officer by order dated 23.3.1989 should not be revised and the Assessing Officer should not be directed to withdraw the depreciation granted to the assessee in respect of the property situated at Mettupalayam Road. Though necessary objections have been filed, ultimately, the Commissioner rejected the same and directed the Assessing Officer to withdraw the depreciation granted to the appellant in respect of his property. That order has been carried on in an appeal by the assessee to the Tribunal. The Tribunal has also concurred with the findings of the Commissioner and passed the order impugned in the present appeal.

5. Learned counsel for the appellant contended that on dissolution of the partnership firm under Section 48 of the Partnership Act, 1932, the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital shall be first complied in paying the debts of the firm to third parties and then paying to each partners rateably what is due to them from the firm for advances as distinguished from the capital and then paying to each partner rateably what is due to him on account of capital and then to a residue, if any, shall be divided among the partners in the proportion in which they were entitled to share profits. As such, there is no necessity for any formal document of registration of the properties and further, there is no requirement under the law to register the same under the Registration Act. The reliance made by the Tribunal to the other provisions are totally extraneous to the provisions under Section 32(1) of the Income-tax Act.

6. On the other hand, learned counsel for the Department contended that even the first transfer made by the individuals to the partnership firm is not in accordance with law as it is not legally transferred, by means of registered document. In such circumstances, the retransfer to the assessee not supported by the documents under Section 17 of the Registration Act cannot be regarded as correct.

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7. We heard the learned counsel appearing for the appellant and the respondent and perused the material on record. As seen from the language employed under Section 32 of the Income-tax Act, the only requirement is the person claiming depreciation is the owner of the property. The terms "own", "ownership" and "owned" were considered by the Supreme Court as generic and relative in the decision reported in 1999 I.T.R. 775 (MYSORE MINERALS LTD. v. C.I.T.. The terms have a wide and a narrow connotation. The meaning would depend on the context in which the terms are used.

8. In the case of C.I.T. v. PODAR CEMENT PVT. LTD. ((1997) 226 ITR 625), which has to be taken as a trend-setter in the concept of ownership, the Supreme Court has held that the term owned as occurring in section 32(1) of the income-tax Act must be assigned a wider meaning. Anyone in possession of property in his own title exercising such dominion over the property, as would enable others, being excluded therefrom and having the right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the building though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act, etc.

9. It is worthwhile to mention here the other decision reported in VOL.212 I.T.R. 592 S.V. CHANDRA PANDIAN v. S.V. SIVALINGA NADAR, in which for dissolution, the matter was referred to arbitration and on the basis of the award, the parties have received their respective properties. The question arose in that case was whether the non registration of the award would dis-entitle the assessee therein to claim depreciation. The Supreme Court has held that the ownership of the property is not pre-supposed the registration of either the arbitration award or a formal document of title deed.

10. In view of the law laid down by the Supreme Court, we are of the considered view that the reasoning given by the Tribunal for non suiting the appellant for claiming depreciation on the ground that on dissolution of partnership, the property allotted to the share of the assessee has not been registered, is not in accordance with law, as explained by the Supreme Court and thus, the Tribunal committed an error of law. In the light of the reasoning stated by us, all the three questions are answered in favour of the assessee.

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11. It is contended by the learned counsel for the appellant that in this appeal, the appellant has paid a sum of Rs.10,000/- as Court fee, but the amount payable by the assessee is only Rs.200/-. Hence, the Registry is directed to refund the balance amount in accordance with law, if the statement made by the learned counsel for the petitioner is correct.

ssa.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner of Income-tax,
Special Range I,
Coimbatore.

2. The Section Officer,
Accounts Section,
High Court, Madras.
(for necessary action in this regard)

3. The Sub Asst Registrar,
AE Section, High Court, Madras.
(for necessary action)

+ 1 cc to Mr.N. Muralikumaran, Advocate SR No.48820

+ 1 cc to Mr.Meenakshi Sundaran, Advocate SR No.48978

GG(CO)
SR/19.12.2005

T.C. No.471 of 1999

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